



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTON  
ATTORNEY GENERAL

December 3, 1990

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR90-568

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9825; your most recent correspondence is ID# 10896.

The Institutional Division of the Texas Department of Criminal Justice (the division) received an open records request for "documents alleged to support" the discharge of a former division employee. You contend that the requested documents come under the protection of sections 3(a)(1), 3(a)(8), and 3(a)(11) of the Open Records Act.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 19A(c)(1) of article 4413(29cc), V.T.C.S., which governs the release of information acquired from polygraph examinations, expressly permits the division to release the results of polygraph examinations to the examinee. Thus, at least with respect to this requestor, no part of his own polygraph examination may be said to be "deemed confidential by law" for purposes of section 3(a)(1). Open Records Decision No. 565 (1990). This information must, therefore, be released to him. You may, however, withhold the results of other individual's polygraph examinations pursuant to section 3(a)(1).

You also contend that the informer's privilege aspect of section 3(a)(1) protects the identities and statements of those who cooperated in an investigation of allegations against the requestor. The statements in question were made by public employees and prison inmates to the internal affairs division in connection with an internal investigation.

The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. If the contents of the informer's statement would tend to reveal the identity of the informer, the privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. Moreover, the basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. See Open Records Decision Nos. 515 (1988); 279 (1981) (and authorities cited therein).

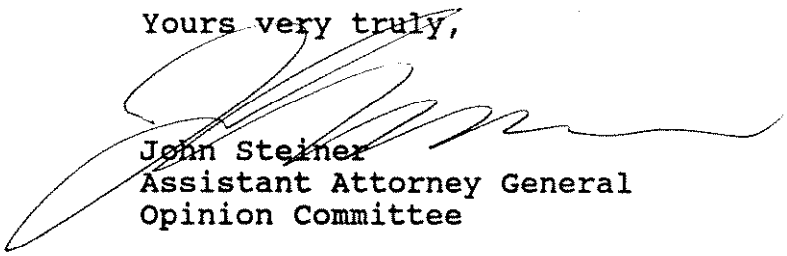
Because the purpose of the privilege is to encourage citizens to voluntarily report violations of the law, the privilege does not extend to instances where cooperation is made a condition of employment. Furthermore, the policy underlying the informer's privilege does not support extending the privilege to cover statements such as these made by public employees about public business. Accordingly, statements by the prison staff may not be withheld under the asserted exception. However, the identity and statement of the inmate who voluntarily came forward and cooperated with the investigation may be withheld, but only if that inmate's identity has not previously been revealed to the requestor or to the other employees who were under investigation. See Open Records Decision No. 208 (1978).

You contend that section 3(a)(8) protects "law enforcement procedures, knowledge of which could assist [the requestor] and others" in avoiding detection in the future. However, you do not assert, nor is it apparent on the face of the documents, how the release of this information will reveal any unobvious strategies or otherwise enable a wrongdoer to thwart an investigation. See Open Records Decision No. 531 (1989). Section 3(a)(8) does not protect any of the requested information.

Section 3(a)(11) of the act protects advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 464 (1987). Section 3(a)(11) does not, however, protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). The employee statements at issue consist solely of factual information and may not be withheld pursuant to section 3(a)(11). We have marked the information that you may withhold pursuant to section 3(a)(11). Except as discussed above, you must release the remaining information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-568.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/RWP/le

Ref.: ID# 10896  
ID# 9825  
ID# 10586  
ID# 10604

Enclosures: Marked documents

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